

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KARIE A. HOOVER and U.S. POSTAL SERVICE,  
POST OFFICE, San Diego, CA

*Docket No. 02-2032; Submitted on the Record;  
Issued January 10, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant had any disability for work or residuals on or after August 15, 2001, the date the Office of Workers' Compensation Programs terminated appellant's compensation benefits.

The Office accepted that on June 22, 1995 appellant, then a 31-year-old letter carrier, sustained cervical and lumbar strains as she was lifting and carrying trays of J.C. Penney catalogues.

Beginning on June 30, 1995 Dr. Kathlyn R. Ignacio, a Board-certified internist, diagnosed persistent right neck strain with overuse and opined that appellant's low back and neck strains were resolving. Dr. Ignacio indicated that appellant could resume modified duty on July 3, 1995. On February 16, 1996 Dr. Ignacio diagnosed myofascial neck and shoulder pain, rotator cuff tenosynovitis of the right shoulder and thoracic outlet syndrome, slightly work aggravated. Dr. Ignacio indicated that appellant could return to modified work on February 15, 1996.

Appellant was referred to Dr. Jonathan S. Halperin for consultation. Dr. Halperin diagnosed cervical and parascapular myofascial pain syndrome on the right; right shoulder rotator cuff tendonopathy and impingement that were both work related. He opined that appellant had a mild vascular thoracic outlet syndrome that was preexisting but aggravated by her work. Dr. Halperin provided appellant's work restrictions, which included no overhead lifting and no lifting greater than 25 pounds.

Appellant resigned her position with the employing establishment effective March 15, 1996, to relocate with her husband to Pason, Arizona. She did not receive medical treatment for her work-related conditions while there. She relocated again in May 1996, to Grand Rapids, Michigan. Appellant sought treatment for continued residuals of her work injury with Dr. Ralph Costanza, a Board-certified orthopedic surgeon.

On July 2, 1996 Dr. Costanza diagnosed posterior right shoulder pain, possible myofascial origin along with focal trapezial myositis. He noted that appellant had spasm and tenderness into the mid portion of the right trapezius and that thoracic outlet maneuvers caused some localized discomfort, but did not appear to cause dysesthesia in her distal extremity. He opined that appellant could continue with work-activity restrictions. On August 22, 1996 Dr. Costanza diagnosed probable chronic trapezial myositis and myofascial pain, upper right extremity and recommended that appellant see a pain management specialist and continue with long-term activity restrictions.

The Office determined that a second opinion evaluation was needed and referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. James E. Ives, a Board-certified orthopedic surgeon. By report dated November 25, 1996, Dr. Ives diagnosed chronic pain in the right trapezius muscle and chronic numbness in the right upper extremity of undetermined etiology. He commented that with the numbness going into the thumb and index finger, the possibility of C6 nerve root irritation on the right existed, but he noted that clinically there was no evidence of it. Dr. Ives recommended a neurological work-up and opined that appellant could work at a job that did not require lifting more than 25 pounds on a repetitive basis. Dr. Ives stated that he could not definitely make the diagnosis of myofascial pain syndrome at that time so a long-term prognosis for return to full duty was unknown.

Appellant thereafter moved to Winston-Salem, North Carolina, in April 1997, followed by a move to Ontario, CA in September 1997; from there she moved to Seattle, Washington in January 1998 and then to Idaho Falls, Idaho in June 1998.

On April 23, 1999 appellant was treated by Dr. Ronald W. Wheeler, a Board-certified orthopedic surgeon, reviewed her history of injury and reported her present complaints. He found physical examination of appellant's right shoulder showed slight prominence and was minimally higher-riding than the left, noted slight tenderness across the upper half of the rhomboids, noted tenderness with slight crepitance across the right levator scapula and diagnosed chronic right trapezius myositis and chronic right levator scapular bursitis. Dr. Wheeler wanted to rule out a neurologic pathology of the posterior cervical nerve roots and/or the greater occipital nerve and he ordered a magnetic resonance imaging (MRI) scan and an upper extremity electromyogram (EMG).

The Office rejected authorization for the EMG as no shoulder condition was accepted as being employment related.

By report dated October 25, 1999, Dr. Wheeler indicated that she had been diagnosed with neck and back strain, cervical pain with possible thoracic outlet syndrome, possible right shoulder pathology, possible myofascial pain and trapezial myositis with chronic right trapezius muscle and right upper extremity numbness of unknown etiology, chronic right levator scapular bursitis and possible cervical root pathology. Dr. Wheeler provided physical examination results, which were unchanged and opined that appellant's current symptoms were related to her work injury in 1995. He diagnosed chronic right trapezius myositis, chronic right levator scapular bursitis and rule out cervical radiculopathy including posterior cervical nerve roots.

The Office determined that an updated second opinion examination was required to determine whether appellant sustained a right shoulder condition and whether she continued to be disabled or have residuals of her accepted injuries.

The Office referred appellant, together with a statement of accepted facts,<sup>1</sup> questions to be addressed and the relevant case record, to Dr. Allan R. Wilson, a Board-certified orthopedic surgeon, for a second opinion examination.

By report dated March 10, 2000, Dr. Wilson reviewed appellant's history of injury and the relevant medical records, noted that the MRI scan revealed a tiny amount of fluid in the subacromial bursa, noted that upon examination that appellant had some tenderness to palpation in the right trapezius area and some tenderness along the vertebral border of the right scapula and noted that with cervical flexion she reported supraorbital pain on the right and he diagnosed regional pain syndrome of the right trapezius. He noted that appellant's shoulder blade was sore on the medial side when the thumb puts pressure on it and that there was a fair amount of coracoacromial popping of the ligament both on the left and right. In answer to specific questions posed by the Office, Dr. Wilson reported that there were no objective findings to support chronic right trapezial pain at that time but just subjective complaints of pain. On examination he found full range of motion, normal motor strength and no evidence of impingement and he opined that appellant had a normal musculoskeletal and neurologic examination. Dr. Wilson noted that the right coracoacromial snapping was not an unusual finding and that: "Her right shoulder condition primarily is localized to the right trapezius and that is subjectively sore. So she does have continued right trapezial pain with no evidence today of localized inflammation and no evidence of spasm. Again it began approximately on June 22, 1995 due to probably employment factors." In response to the Office question about residuals, Dr. Wilson replied that appellant continued to report right shoulder pain in the area of the right trapezius and reported pain upon palpation, but that the musculoskeletal and neurologic examinations were entirely normal, including neck and shoulder ranges of motion. He stated that he did not understand the mechanism and reason for appellant's continued subjective reports of pain. Dr. Wilson noted the absence of EMG testing results of the trapezius muscle groups, which he felt might be helpful in determining whether there was any component of active disease process, but noted that other electrodiagnostic testing results were normal. Dr. Wilson opined that appellant's condition was fixed and stable, but noted that it would be anticipated that appellant would continue to report subjective pain complaints. He opined that there were no objective findings to suggest physical limitations were necessary, but noted that "it is appropriate with [appellant] experiencing chronic pain to limit her repetitive lifting to not over 20 pounds and no lifting overhead with the right arm."

By notice of proposed termination dated June 1, 2001, the Office accepted appellant's claim for trapezius muscle strain of the right shoulder, but found that it had resolved without residuals. The Office found that Dr. Wilson's report represented the weight of the medical opinion evidence and established that appellant had no further disability for work or residuals requiring further medical treatment. The Office advised appellant that if she disagreed with the proposed action, she had 30 days within which to submit further medical evidence or argument.

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<sup>1</sup> The statement of accepted facts indicated that the only accepted conditions were cervical and lumbar strain.

On June 25, 2001 appellant through her representative, requested an appeal and an oral hearing.

By decision dated August 15, 2001, the Office finalized its proposed termination of compensation effective that date.

On April 19, 2002 appellant through her representative, requested reconsideration and in support she submitted additional medical evidence.

By report dated January 31, 2002, Dr. Wheeler noted appellant's history with ongoing complaints of right upper extremity pain with activity, especially lifting, pushing or pulling, as well as complaints of numbness and indicated that she had restrictions of the right shoulder with atrophy of the infraspinatus and a suggestion of slight atrophy of the supraspinatus. He opined that this suggested injury to the suprascapular nerve posteriorly and possibly some greater occipital nerve involvement and diagnosed chronic right trapezius myositis; chronic right levator scapular bursitis and posterior cervical nerve root involvement, most likely the suprascapular nerve.

In a March 28, 2002 letter in response to appellant's representative's questions, Dr. Wheeler noted that objective musculoskeletal findings at that time included atrophy of the right infraspinatus muscle and slight atrophy of the supraspinatus muscle. He noted that appellant's right shoulder muscle group atrophy caused some change in position of the right shoulder, particularly with activity and that repetitive activity caused increased discomfort. He opined that there was a causal connection between her conditions and her employment accident and that she had permanent physical limitations with repetitive work above her shoulder level.

By decision dated May 22, 2002, the Office denied modification of the August 15, 2001 decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>4</sup> To terminate authorization for medical treatment,

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<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>4</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>5</sup>

Dr. Wheeler provided two reports which reviewed appellant's factual and medical history and reported physical examination results noting that appellant's right shoulder showed slight prominence and was minimally higher-riding than the left, noting slight tenderness across the upper half of the rhomboids, noting tenderness with slight crepitation across the right levator scapula and diagnosing chronic right trapezius myositis and chronic right levator scapular bursitis. He wanted to rule out a neurologic pathology of the posterior cervical nerve roots and/or the greater occipital nerve and he ordered an MRI scan and an upper extremity EMG. In a follow-up October 25, 1999 report, Dr. Wheeler reiterated appellant's chronic symptoms, reported her interval history, noted that her symptoms had been persisting since the time of injury and indicated that she had been diagnosed by her other treating physicians with neck and back strain, cervical pain with possible thoracic outlet syndrome, possible right shoulder pathology, possible myofascial pain and trapezial myositis with chronic right trapezius muscle and right upper extremity numbness of unknown etiology, chronic right levator scapular bursitis and possible cervical root pathology. Dr. Wheeler provided physical examination results, which were unchanged and opined that appellant's current symptoms were related to her work injury in 1995. He diagnosed chronic right trapezius myositis, chronic right levator scapular bursitis and rule out cervical radiculopathy including posterior cervical nerve roots.

The Office's second opinion specialist, Dr. Wilson, however, noted that the MRI scan revealed a tiny amount of fluid in the subacromial bursa, noted that appellant had some tenderness to palpation in the right trapezius area and some tenderness along the vertebral border of the right scapula and that appellant's shoulder blade was sore on the medial side with pressure and noted that with cervical flexion she reported supraorbital pain on the right and he diagnosed regional pain syndrome of the right trapezius. He noted that there were no objective findings to support chronic right trapezial pain at that time, but just subjective complaints of pain, that he found full range of motion, normal motor strength and no evidence of impingement and that appellant had a normal musculoskeletal and neurologic examination. Dr. Wilson noted that: "Her right shoulder condition primarily is localized to the right trapezius and that is subjectively sore. So she does have continued right trapezial pain with no evidence today of localized inflammation and no evidence of spasm. Again it began approximately on June 22, 1995 due to probably employment factors." In response to the Office question about residuals, Dr. Wilson replied that appellant continued to report right shoulder pain in the area of the right trapezius and reported pain upon palpation, but he noted that her musculoskeletal and neurologic examinations were entirely normal, including neck and shoulder ranges of motion. Dr. Wilson stated that he did not understand the mechanism and reason for appellant's continued subjective reports of pain. He noted the absence of EMG testing results of the trapezius muscle groups, which he felt might be helpful in determining whether there was any component of active disease process, but noted that other electrodiagnostic testing results were normal. Dr. Wilson opined that appellant's condition was fixed and stable, but noted that it would be anticipated that appellant would continue to report subjective pain complaints. He opined that there were no objective findings to

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<sup>5</sup> See *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

suggest physical limitations were necessary, but noted that “it is appropriate with [appellant] experiencing chronic pain to limit her repetitive lifting to not over 20 pounds and no lifting overhead with the right arm.”

The Board notes that when Dr. Wilson rendered his second opinion report the statement of accepted facts included cervical and lumbar strain as the only accepted conditions and that the right trapezial strain, which was accepted by the Office upon notice of proposed termination, was not included.

The Board finds an unresolved conflict exists between Drs. Wheeler and Wilson as to whether appellant has continuing disability causally related to the June 22, 1995 injuries and as to whether she had injury residuals, which require further medical treatment. As such a conflict exists,<sup>6</sup> the Office erroneously determined that Dr. Wilson’s report constituted the weight of the medical opinion evidence and, therefore, it erroneously terminated compensation and medical benefits based upon his report.

As this is the disposition of the termination decision, the May 22, 2002 decision becomes moot.

Consequently, the May 22, 2002 and August 15, 2001 decision of the Office of Workers’ Compensation Programs are hereby reversed.

Dated, Washington, DC  
January 10, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”